THE EFFECT OF FOREIGN CHATTEL MORTGAGES UPON THE RIGHTS OF SUBSEQUENT PURCHASERS AND CREDITORS

SHOULD the title or lien of a foreign mortgagee be protected against the claims of creditors and innocent purchasers in the state to which the mortgaged property is removed?

It is sometimes said that the chattel mortgage creates a mere lien by the law of the state where made, which is not entitled to recognition in any other state. The weight of authority is otherwise. It is a transfer of the property itself as a security for the debt.[1] There are some states in which a mortgage of personal property creates no title in the mortgagee, but a mere lien; but even here the lien is created by contract, not by the law of the state, as will be seen hereafter. And according to certain well established principles of law, recognized by that comity which exists between all civilized nations, the mortgagee's rights are superior to all subsequently acquired claims, and should be enforceable in the courts of any state into which the property is brought, even against the claims of its own citizens. Despite the apparent confusion in many of the decisions, owing to the peculiar circumstances attending particular transactions, the courts of all but a very few states give to a mortgage duly executed and recorded in a foreign state the same effect that it has in that state. Its validity and priority are recognized in Alabama, Arkansas, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, South Carolina, Texas, Vermont, Virginia, and by the courts of the United States including the Supreme Court.[2] Alabama and Georgia have statutes

[1] Conrad *v.* Atlantic Insurance Company, 26 U. S. (1 Pet) 386 (1828).

[2] Beall *v.* Williamson, 14 Ala. 55 (1848); Johnson *v.* Hughes, 89 Ala. 589 (1889); Hall *v.* Pillow, 31 Ark. 32 (1876); Creelman Lumber Co. *v.* Lesh, 73 Ark. 16, 83 S. W. Rep. 320 (1904); Van Buskirk *v.* Hartford Fire Ins. Co., 14 Conn. 582 (1842); Ballard *v.* Winter, 39 Conn. 179 (1872); Hubbard *v.* Andrews, 76 Ga. 177 (1886); Peterson *v.* Kaigler, 78 Ga. 464 (1887); Crowell *v.* Skipper, 6 Fla. 580 (1856); Mumford *v.* Canty, 50 Ill. 370 (1869); Blystone *v.* Burgett, 10 Ind. 28 (1857); Smith *v.* McLean, 24 Iowa, 322 (1868); Sims *v.* McKee, 25 Iowa, 341 (1868); Fisher *v.* Friedman, 47 Iowa, 443 (1877); Ord National Bank *v.* Massey, 48 Kas. 762 (1892); Handley *v.* Harris, 48 Kas. 606 (1892); Jones Stationery Co. *v.* Jeffries, 9 Ky. Law Rep. 148 (1887); Stirk *v.* Hamilton, 83 Me. 524 (1891); Bruce's Admr. *v.* Smith, 3 Harris & J. (Md.) 499 (1814); Wilson *v.* Carson, 12 Md. 54 (1857); Langworthy *v.* Little, 12 Cush. 109 (1853); Bank *v.* Danforth, 14 Gray (Mass.) 123 (1859); Keenan *v.* Stimson, 32 Minn. 377 (1884); Barker *v.* Stacey, 25 Miss. 471 (1853); Smith *v.* Hutchings, 30 Mo. 380 (1860); Nat'l Bank of Commerce *v.* Morris, 144 Mo. 255 (1893); Offutt *v.* Flagg, 10 N. H. 46 (1838); Ferguson *v.* Clifford, 37 N. H. 86 (1858); Cushman *v.* Luther, 53 N. H. 562 (1873); Parr *v.* Brady, 37 N. J. Law, 201 (1874); Martin *v.* Hill, 12

requiring a foreign chattel mortgage to be registered also in those states in order to bar the rights of innocent purchasers, Alabama allowing four months' time after the property is brought into that state, and Georgia six months. But they apply the general rule up to the date at which the time allowed for such registration expires, and if the mortgage is duly executed and recorded in the state where the owner then resided, the claims of innocent purchasers or creditors acquired in Alabama or Georgia within that period must yield precedence to the mortgage.[3]

In the Michigan cases[4] and the Tennessee case[5]—more particularly discussed hereinafter—denying the general rule, the courts say that registration laws can have no force beyond the jurisdiction of the sovereignty which enacted them, and that the recording of a chattel mortgage is no notice to creditors in another state. This leaves the mortgage still operative as between mortgagor and mortgagee. But the mortgagee is entitled to all the beneficial effects of his security, the most important of which is protection against the subsequently acquired claims of other creditors or purchasers. In fact, such protection may be said to be the prime object of every mortgage. As far as the parties alone are concerned, the mortgage is unnecessary. The mortgagee, upon the maturity and non-payment of his debt, might rely upon obtaining satisfaction out of the property by judgment and levy of execution, were it not for the danger of intervening claims.

The law of the place of contract governs as to the nature, validity, construction and effect of the contract.[6] This is the true principle governing chattel mortgages. It is the basis of the numerous decisions upholding the priority of the foreign mortgagee's title. The courts which hold to the contrary make a distinction between the

Barb. (N. Y.) 631 (1851); Tyler *v.* Strang, 21 Barb. 198 (1855); Fairbanks *v.* Bloomfield, 5 Duer (N. Y.) 434 (1856); Watson *v.* Campbell, 38 N. Y. 153 (1868); Edgerly *v.* Bush, 81 N. Y. 199 (1880); Nichols *v.* Mase, 94 N. Y. 160 (1883); Anderson *v.* Doak, 10 Ired. L. (N. C.) 295 (1849); Hornthall *v.* Burwell, 109 N. C. 10 (1891); Kanaga *v.* Taylor, 7 Ohio State, 134 (1857); Bank *v.* McLeod, 38 Ohio State, 174 (1882); Richardson *v.* Shelby, 3 Okla. 68 (1895); Ryan *v.* Clanton, 3 Strobhart L. (S. C.) 411 (1849); Blythe *v.* Crump, 28 Tex. Civ. App. 327 (1902); Scaling *v.* Bank (Tex. Ct. Civ. App.), 87 S. W. Rep. 715 (May, 1905); Taylor *v.* Boardman, 25 Vt. 581 (1853); Jones *v.* Taylor, 30 Vt. 42 (1857); Hanford *v.* Paine, 32 Vt. 442 (1860); Cobb *v.* Buswell, 37 Vt. 337 (1864); Norris *v.* Sowles, 57 Vt. 360 (1885); Craig *v.* Williams, 90 Va. 500 (1894); Alferitz *v.* Ingalls (U. S. Cir. Ct., Dist. Nev.), 83 Fed. 964 (1897); Shapard *v.* Hynes, 45 C. C. A. 271 (1900); Banks *v.* Lee, 13 Peters (U. S.) 107 (1839); DeLane *v.* Moore, 14 How. (U. S.) 253 (1852).

[3] Johnson *v.* Hughes, 89 Ala. 589; Hubbard *v.* Andrews, 76 Ga. 177; Peterson *v.* Kaigler, 78 Ga. 464.

[4] Montgomery *v.* Wight, 8 Mich. 142 (1860); Boydson *v.* Goodrich, 49 Mich. 65 (1882); Corbett *v.* Littlefield, 84 Mich. 35 (1890).

[5] Snyder *v.* Yates, 112 Tenn. 309 (1903).

[6] Jones, Chattel Mortgages, § 299; Story, Confl. Laws, § 244; 2 Kent Com. 458.

priority and validity of a contract; and, while admitting that the latter is governed by the lex contractus, they say that the right of priority is determined by the law of the forum. To this they cite *Harrison* v. *Sterry*,[7] to-wit: "The law of a place where the contract is made is, generally speaking, the law of the contract, i. e., it is the law by which the contract is expounded. But the right of priority forms no part of the contract itself. It is extrinsic, and is rather a personal privilege, dependent on the law of the place where the property lies, and where the court sits which is to decide the cause." It is a little singular that this language should have proved so misleading. The priority referred to is the priority given by the law of the place where the debtor resides. The foreign lien-holders were claiming priority, not by virtue of their contracts, but under the bankrupt law of England. The rights of priority conferred by law in cases of insolvency, intestacy, bankruptcy, and the like, constitute a very different sort of priority from that of a superior title or lien created by the contract itself. "It is admitted that a voluntary assignment, made according to the law of his domicile, will pass the personal estate, whatever may be its locality, abroad as well as at home. The law distinguishes that which results from the exercise of power from that which comes from the free will of the party; the former is limited in its effect to the country where the law is in force, whilst the latter is given universal and general operation, under the comity of nations."[8] This distinction is expressly recognized in many of the cases.

It may be said here further, that the United States, being a creditor of the bankrupt, in *Harrison* v. *Sterry,* was given priority over the foreign creditors as well as those residing in this country, by virtue of an Act of Congress of March 2nd, 1797, giving the United States as a creditor priority over all other creditors in certain cases. This right, conferred by an express law of the forum, was in direct conflict with the law of England giving priority to other claims. The doctrine of comity does not extend to such cases.[9] And further, the assets of the bankrupt in question were within the United States at the time of the assignment in bankruptcy made in England, thus bringing the case within another important exception to the general rule, to be mentioned later.

Of course the priority conferred by law on certain classes of contracts forms no part of the contract itself, but "is rather a personal privilege, dependent on the law of the place where the property lies and where the court sits which is to decide the cause." It

[7] 5 Cranch (U. S.) 289 (opinion by MARSHALL, C. J., 1809).

[8] Story, Confl. Laws, § 111.

[9] See Exception b. to the general rule, infra.

is apparent from the facts in *Harrison* v. *Sterry*, supra, that such was the priority spoken of by Mr. CHIEF JUSTICE MARSHALL; that he had no reference to the priority which every valid contract for the transfer of property has over subsequent transfers by the same person. This latter priority, according to JUDGE STORY, is given universal and general operation, by the comity of nations. The validity of the title conveyed by the first mortgage is inseparable from its priority; otherwise it is no title at all, but a mere conditional, prospective lien, liable to be divested at any time without the mortgagee's consent, and therefore utterly worthless. If this priority forms no part of the contract, every subsequent purchaser for value is an innocent purchaser—notice of such priority being the only thing which can prevent an innocent purchase for value, and that maxim of the law which declares that a vendor can convey no better title than he has himself is destroyed.

And, as we have seen, this right of priority, so far from forming no part of the contract, is the very thing contracted for. Witness the usual covenant against prior incumbrances. Without it the mortgage is no security; the mortgagee's remedy is just as good by way of judgment and execution at the maturity of his debt, as by a transfer of the title or right to the property at the time the debt is contracted, if the mortgage gives no right superior to those subsequently acquired.

In view of these considerations, *Harrison* v. *Sterry* is no authority for denying the priority of a foreign chattel mortgage over the claims of creditors within the jurisdiction of the forum.

Nor can it be successfully contended that because the registration laws of a state have no extraterritorial force, the priority of a chattel mortgage conferred by registration is not entitled to enforcement in other states. Strictly speaking, priority is not conferred by registration. As we have already seen, it is conferred by the contract itself, the statutes concerning registration being designed merely to protect that priority by supplying a constructive notice which shall take the place of actual notice whenever the latter may be wanting. Priority is only the legal term for the superiority of a prior title or lien. Before equity worked out the doctrine of innocent purchase, the first contract invariably gave a superior title. The doctrine of innocent purchase formed an exception to the general rule, and to prevent its too wide operation, laws were enacted requiring registration and making that equivalent to actual notice. But priority is no more conferred by registration than by actual notice. It existed before them, and though liable now to be lost for want of one or the other, it has its origin in the mortgage itself.

The majority decisions are for the most part based on the true

principle, that the registration laws of their own states do not apply to a mortgage on property which at the time of the execution of the mortgage was within the jurisdiction of another state, but that comity will give to such mortgage, if properly executed and recorded there, the same effect that it has by the law of that state, notwithstanding its execution or registration might have been invalid under the laws of their own state. "The constructive notice imparted by the recording of a chattel mortgage is not confined to the county or state where the mortgage was executed and the property then was, but extends to wherever the property may be removed."[10]

"Where a mortgage is duly recorded in another state, the removal of the property into this state will not displace the lien or render it necessary to record the instrument here."[11] It is difficult to conceive of that comity which recognizes the validity of a foreign contract but not its priority, inseparable as they are seen to be. The obligation of every contract consists in the sanction of the law which makes binding the promise of the contractor.[12] It is the same law which makes the promise binding and which at the same time gives it legal priority if first in point of time. The doctrine of comity imposes the same obligation to recognize one as the other.

It is admitted that this priority of a contract made in one state, is not a right in any other state stricti juris. It depends on comity; and in extending it, courts are always careful to see that neither the statutory nor common law policy of their own states is infringed. If, however, a foreign chattel mortgage is not violative of any principle of law or settled public policy of the state to which the property is removed, its priority is almost universally recognized, if properly recorded in the state where the property was located and the mortgagor then resided.

There is another equally well established principle of law applicable to foreign chattel mortgages, viz., that the situs of personal property is at the domicile of the owner, and a contract made with reference thereto, if valid according to the law of such domicile, is valid everywhere. This rule is practically the same as the former in its application to chattel mortgages, the domicile of the owner being the locus of his contracts except in those cases hereinafter mentioned, which, on account of their circumstances, constitute an exception to both of these rules.

The property being usually at the owner's domicile, it is easy to

[10] Smith *v.* McLean, 24 Iowa, 322 (1868, BECK, J.); Sims *v.* McKee, 25 Iowa, 341 (1868, BECK, J.); Ord National Bank *v.* Massey, 48 Kas. 762 (1892, SIMPSON, C.).

[11] Hall *v.* Pillow, 31 Ark. 32 (1872, HARRISON, J.); Wilson *v.* Carson, 12 Md. 54 (1857, LE GRAND, C. J.).

[12] Sturges *v.* Crowninshield, 4 Wheat. 122 (1819).

confound the actual situs with such domicile. For this reason it is frequently asserted in cases which admit the general rule, as well as those which come within exception (a) infra—that chattel mortgages, unlike other contracts, are governed by the law of the situs of the property and not by the lex contractus (or lex domicilii). But the distinction should be carefully observed, that the law which controls in such cases does so because it is the law of the domicile (and of the contract), and not because it is the law of the situs of the property. For instance, suppose the property to be in Ohio at the time the mortgage is executed and recorded in Illinois, where the owner resides, and that the property is afterward carried into Missouri and sought to be held by attaching creditors in that state. Undoubtedly the laws of Illinois, the domicile of the owner and the place of the contract, would be resorted to in order to determine the validity and effect of the mortgage, not the law of Ohio where the property was at the time. Suppose, again, the property to be within a foreign state at the time that the mortgage is made and recorded in the state to which the property is afterward removed and where the owner has all along resided. The lex domicilii controls, not the lex situs.[13]

It will be observed that the state of facts in *Tyler* v. *Strang* is just the reverse of *Ames Iron Works* v. *Warren*,[14] and the other cases in its class (exception (a), infra), where the property was within the state in which suit was afterwards brought, at the time that the mortgage was executed and recorded at the owner's domicile within another jurisdiction, and that the law of the situs controls these cases because of the settled policy of the state in which the property is situated of protecting its own citizens under such circumstances,—this policy creating an exception in such cases to the general rule.

The failure to observe this distinction gives rise to the supposed rule that chattel mortgages are governed by the lex situs. Thus it is said in one of the cases that *Watson* v. *Campbell*,[15] holding that the validity of a chattel mortgage must be determined by the laws of the state in which the property is situated when the mortgage is made (by inference, the lex situs), overrules *Tyler* v. *Strang*.[16] This is not true. Both illustrate the general rule that the mortgage contract is governed by the law of the domicile, the place of the contract, although in the former that place was also the situs of the property at the time of the mortgage, while in the latter it was not.

[13] Tyler *v.* Strang, 21 Barb. 198 (1855).
[14] 76 Ind. 512 (1881).
[15] 38 N. Y. 153.
[16] 21 Barb. 198 (1855).

Exceptions.

(a) Chattel mortgages are usually made and recorded at the place where the property is at the time. Sometimes, however, they are executed and recorded in a foreign state at the time that the property is within the jurisdiction of the state in which suit is afterwards brought. In such cases the claims of attaching creditors within the jurisdiction are usually given preference over the mortgage.[17]

These cases are often cited in those which deny the general rule and hold that a foreign mortgage is not entitled to priority in any case over creditors or purchasers within the jurisdiction of the forum. But they are merely an exception to the general rule because they fall within another well recognized principle of law, viz.: That no state is bound to recognize and give effect to a transfer of property at the time within its own jurisdiction, to the prejudice of its own claims or those of its citizens.[18]

It is certainly competent for a state to suspend the general rule under such circumstances, having perfect jurisdiction over all property, movable as well as immovable, within its territorial jurisdiction. Probably the circumstances make it more equitable to adopt such a policy than the general rule, because the claims preferred may arise out of credit extended on the faith of such property, prior to the mortgage.

Guillander v. *Howell*,[19] presents a case within this class where the exception rule was applied by the state where the contract was made. That is, the property was in New Jersey at the time that the owner (residing in New York) made an assignment in New York for the benefit of his creditors. The assignment was held void, in this action against creditors residing in New York for converting the property, they having attached and sold it in New Jersey after the assignment was recorded in New York, because, although good under the laws of New York where the owner resided, it was void under the law of New Jersey where the property was at the time.

But even in those states which have adopted this policy, the general rule still has operation as far as non-resident creditors or purchasers are concerned, and also in those cases (by far the most numerous) where the property was at the domicile of the owner in a foreign state when the mortgage was executed there, or within still another jurisdiction.

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[17] Hardaway *v.* Semmes, 38 Ala. 146 (1816); Ames Iron Works *v.* Warren, 76 Ind. 512 (1881); Tillman *v.* Cowand, 12 Miss. 262 (1849); Aultman Machine Co. *v.* Warren, 114 Iowa, 444 (1900), 87 N. W. 435, 89 Am. St. R. 373.

[18] Harrison *v.* Sterry, 5 Cranch, 289 (1809); Cooley, Constitutional Law, 197, citing Ames Iron Works *v.* Warren, 76 Ind. 512.

[19] 35 N. Y. 657 (1866).

Moreover, this policy is not in force in all the states, even under similar circumstances. In *Hanford* v. *Paine*,[20] the facts were these: Paine, who was a resident of New York, executed and recorded there an assignment of all his property for the benefit of his creditors. Among his effects was an interest in a stock of goods located at the time within the state of Vermont. The assignment was valid according to the laws of New York, though not conforming to certain requirements of the Vermont statutes. Yet it was held that the assignment, being duly recorded under the laws of New York, was valid in Vermont and passed title to personal property there; that the assignment was superior to the lien of subsequently attaching creditors in Vermont.

Thus there are at least four differing situations in which a conflict of this kind may arise, viz.:

1. Where the property was at the date of the mortgage in a foreign state, the domicile of the owner and the place where the mortgage was made and recorded. The general rule applies here; the lex domicilii (lex contractus) controls.[21]

2. Where the property is in a foreign state at the time that the mortgage is executed and recorded in the state of the forum, the domicile of the owner. The general rule applies here; the lex domicilii (lex contractus) controls.[22]

3. Where the property is situated in the state of the forum at the time that the mortgage is executed and recorded elsewhere. According to one case, at least, the general rule controls here also.[23] Usually, however, such mortgages are made an exception to the general rule (Exception, (a), supra) and the claims of attaching creditors or subsequent innocent purchasers within the forum are given preference over the mortgage.[24]

4. Where the property was at the date of the mortgage in one state, the owner residing and the mortgage being executed in another, and the property is afterwards brought into a third state and there sought to be reached by creditors or purchasers. Presumably in this case also the general rule would apply. I have been unable to find any reported case presenting such a state of facts, in all probability because no one has ever questioned the fact that the situs of the property is at the domicile of the owner.

(b) A second universally acknowledged exception to the general

[20] 32 Vt. 442.

[21] See the numerous decisions cited in Note 2. Contra, the cases in the courts of Michigan, Pennsylvania and Tennessee hereinafter mentioned.

[22] Tyler *v.* Strang, 21 Barb. 198 (1855).

[23] Hanford *v.* Paine, 32 Vt. 442.

[24] Ames Iron Works *v.* Warren, 76 Ind. 512, and other cases cited in support of this exception.

rule exists where the mortgage, though good where made and where the property was at the time, contravenes some express law or settled public policy of the state into which the property has been brought. This exception includes the last, if we say that it is contrary to the public policy of a state to allow to a foreign mortgage on property within its jurisdiction priority over the claims of its own citizens[25]

Martin v. *Hill*,[26] *Edgerly* v. *Bush*,[27] and *Hornthall* v. *Burwell*,[28] cited in support of the general rule, illustrate this exception as well. In these cases the property was situated in the state of the forum at the time that the mortgage was executed and recorded there. The mortgages were good in these states, and the mortgagees acquired a good title.

The property was subsequently removed into other states where the possession of the mortgagor without registration of the mortgage was by law made a fraud upon creditors or innocent purchasers. The property was sold in these states to innocent purchasers, but upon its return to the states where the mortgages were made, was recovered by the mortgagee. The titles acquired by the laws of New York and North Carolina, respectively, were good; hence it was upheld, even against innocent purchasers in the states to which the property was removed. The general rule applied. The title of the innocent purchasers, however, was good according to the laws of those states in which they acquired title; but it could not be recognized in New York or North Carolina because acquired under laws directly in conflict with their own.

(c) A debt or chose in action has its situs at the domicile, not of the owner (the creditor), but of the debtor.[29] Hence an assignment or mortgage of a debt is governed by the law of the debtor's domicile.[30]

(d) Where a contract is made in view of the immediate transfer of the property to another state, or it is otherwise made with express reference to the laws of another state, it is to be construed by the laws of that state. That is, the law of the place of performance, rather than the lex domicilii of the owner, is in such cases considered

[25] See Guillander *v.* Howell, 35 N. Y. 657 (1866); also Zipcey *v.* Thompson, 1 Gray (Mass.) 243 (1854); Boyd *v.* Rockport Mills, 7 Gray 406 (1856); Varnum *v.* Camp, 13 N. J. Law, 326 (1833); Greene *v.* Bentley, 52 C. C. A. 60 (1902).

[26] 12 Barb. 631.

[27] 81 N. Y. 199.

[28] 109 N. C. 10.

[29] Byron *v.* Byron, Hil. 38 Elizab. Cro. 472; Chicago, Rock Island & Pacific Ry. Co. *v.* Sturm, 174 U. S. 710 (1898).

[30] Lewis *v.* Bush, 30 Minn. 244 (1883). Contra, Vanbuskirk *v.* Hartford Fire Ins. Co., 14 Conn. 582 (1842), holding that the assignment of a debt is governed by the lex domicilii of the owner.

the place of the contract.[31] In the last case cited the mortgage, although void by the laws of New York where it was made, and where the property was at the time and the owner resided, was held good because not obnoxious to the laws of Connecticut, to which state it was evidently intended the property should be (and was) immediately removed. The court said in this case, "The general rule that the lex loci contractus shall govern * * * is, theoretically, at least, founded upon the presumed intention of the parties contracting with reference to that law; and when the contract is to be performed elsewhere, or is to have its entire beneficial operation and effect elsewhere, then the law of the latter place is to govern, because, in the absence of anything to the contrary, it is presumed that the parties so intended."

(e) There is at least one other exception, in which a transfer of personal property is governed by the law of the situs regardless of the lex domicilii or lex contractus. It does not concern chattel mortgages, but it is mentioned here in order to distinguish it from the general rule which does. A transfer of property by operation of law, as under bankruptcy proceedings, is governed by the law of the situs.[32] So, also, in cases of intestacy, the assets of the decedent pass by law to the administrator for the payment of debts and distribution, according to the lex rei sitæ, where the assets are and administration is granted.[33]

States in Which the General Rule is Denied.

The Supreme Court of Tennessee, after adhering to the general rule for more than three quarters of a century, recently reversed itself and took the opposite position. See *Crenshaw* v. *Anthony,*[34] *Bank* v. *Hill, Fontaine & Co.*[35] and *Hughes* v. *Abston,*[36] announcing the general rule and supporting the priority of the foreign mortgagee's title, though unrecorded in Tennessee, against the claims of creditors attaching the property after it was brought into that state. The same justice who delivered the opinion of the court in the last named case, also delivered the opinion in the recent case of *Snyder* v. *Yates,*[37] giving the preference to the attaching creditor. The

[31] Lathe *v.* Schoff, 60 N. H. 34 (1880); Chillingworth *v.* Tinware Co., 66 Conn. 306 (1895).

[32] Milne *v.* Moreton, 6 Binney (Pa.) 353 (1814); Kelly *v.* Crapo, 45 N. Y. 86, affirmed in 83 U. S. 610.

[33] Smith *v.* Union Bank of Georgetown, 5 Peters (U. S.) 518 (1831).

[34] Martin & Yerger, 102 (1827).

[35] 15 Pickle, 42 (1897).

[36] 105 Tenn. (1900).

[37] 112 Tenn. 309 (1903).

mortgage in this case was recorded also in Tennessee, but its acknowledgment, although sufficient under the laws of Illinois where the mortgage was made and first recorded, and where the property then was and the owner resided, did not entitle the instrument to registration in Tennessee. JUDGE WILKES distinguishes this case from the last two by saying that the subsequent purchasers or creditors in those cases were found to be not innocent purchasers. This point, however, was not settled in *Bank* v. *Hill,* and was not even raised in *Hughes* v. *Abston* so far as the report shows. The former was decided upon the correct principle that a sale or chattel mortgage of property good by the law of another state where it is then located and the owner resides, is good in the foreign forum against both creditors and purchasers acquiring rights subsequent to its removal, subject alone to the qualification or limitation that there is no statute or settled public policy of the state contrary thereto.[38] *Hughes* v. *Abston,* said JUDGE WILKES, "is, we think, answered by the case of *Bank* v. *Hill, Fontaine & Co.,* 15 Pickle, 45." His decision in *Snyder* v. *Yates,* supra, is not to be reconciled with those cases.

Apparently he also overlooked the early case of *Crenshaw* v. *Anthony,*[39] decided by JUDGE CATRON in 1827. There was a conflict of testimony in that case as to whether or not the creditors of Daniel Crenshaw, who retained possession and brought the slaves from Virginia into Tennessee, had notice of the title of the trustee. But the court said (page 115) that neither such notice nor the want of it could make the trustee's title valid or void, if bona fide in its inception and legally vested. That was a trust deed by Daniel Crenshaw to his son, trustee, to the sole and separate use of his (Daniel's) wife. Daniel Crenshaw, after moving with the property into Tennessee, continued to treat the slaves as his own. The trust deed was duly recorded in Virginia where it was made, and where the parties all resided at the time, but was never recorded in Tennessee. It is an interesting fact that this case of *Crenshaw* v. *Anthony* was made the basis of the decision of the United States Supreme Court, in *United States Bank* v. *Lee,*[40] the opinion being delivered by Mr. JUSTICE CATRON after his elevation to that bench. This case is very generally cited by the state courts as authority for the general rule.

The Supreme Court of Michigan has from the first consistently refused to allow any extraterritorial effect to foreign chattel mortgages, although properly executed and recorded in the state where the owner resided and where the property then was, as against the

[38] See the opinion of JUDGE BEARD, Bank *v.* Hill, Fontaine & Co., 15 Pickle, 42, 46.

[39] Martin & Yerger, 102.

[40] 13 Peters, 107.

claims of third persons prosecuted in Michigan.[41] These decisions are all based upon the statement of Mr. CHIEF JUSTICE MARSHALL in *Harrison* v. *Sterry*, that priority "forms no part of the contract itself, but is rather a personal privilege, dependent on the law of the place where the property lies and where the court sits which is to decide the cause." But, as we have seen, it is quite clear that the priority of which he spoke was that conferred by law on debts which otherwise would have been entitled only to equal participation in the debtor's assets; that he had no reference to the superiority of a title or lien created by prior contract.

Pennsylvania is the only other state, so far as I have been able to ascertain, which denies the general rule and gives to creditors within its jurisdiction priority over chattel mortgages duly executed and recorded in another state where the owner resided and where the property then was.[42]

Doubtless in these cases the equity in favor of an innocent purchaser who bought the property and paid full value for it without actual knowledge of the mortgage, has appealed strongly to the court. But it is no greater hardship to require purchasers to examine the records of another state or buy at their peril, than the records of other counties in the same state. Yet it is universally conceded, in the absence of statutes providing otherwise, that a chattel mortgage properly recorded in one county is good as against subsequent purchasers or attaching creditors in another county to which the property is removed, and without re-registration there. Purchasers must ascertain where the owner has previously lived and examine the records there. The doctrine of caveat emptor applies here.

Especially can attaching creditors have no rights superior to a mortgage previously recorded, though in another state. As the court very justly observed in *Parr* v. *Brady*:[43] "This conclusion may work a hardship upon our own citizens in cases like this, but under the reverse state of facts it might protect them, if, as mortgagees here, their property should be transported to New York to defeat their claims." The reverse is equally true of the policy of Michigan, Pennsylvania and Tennessee. Though designed to protect their own citizens, it would operate against them if followed by other courts, when they as mortgagees seek to recover property removed without their knowledge into the jurisdiction of the latter.

[41] Montgomery *v.* Wight, 8 Mich. 142 (1860); Boydson *v.* Goodrich, 49 Mich. 65 (1882); Corbett *v.* Littlefield, 84 Mich. 35 (1890).

[42] McKaig *v.* Jones, 2 Clark, 123, s. c. 3 Pa. Law Journal, 365 (1842); McCabe *v.* Blymyr, 9 Phila. 615 (1872); and Armitage *v.* Spahm (Com. Pl.), 4 Pa. Dist. Rep. 270 (1895).

[43] 37 N. J. Law, 201.

The general rule is founded on the correct principle that the mortgage with all its incidents should be governed by the lex loci contractus. That rule protects the mortgagee. It does not defraud creditors whose claims existed before the mortgage—they have not been as diligent as the mortgagee in obtaining security; nor subsequent creditors, because their claims are inferior. Nor does it work any greater hardship upon innocent purchasers than in other circumstances under which they have constructive but not actual notice.

The position of the Michigan, Pennsylvania and Tennessee courts is indefensible, except upon the ground that the doctrine of comity imposes no obligation.

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